IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1948.

No. 460

WILLIAM J. CLEARY,

Petitioner,

vs.

CHICAGO TITLE AND TRUST COMPANY,
A CORPORATION,

Respondent.

RESPONDENT'S REPLY TO PETITION FOR REHEARING.

JOSEPH B. FLEMING,
HAROLD L. REEVE,
Attorneys for Respondent.

CHARLES F. GRIMES,
WILLIAM WILSON,
Of Counsel.

THE BURNHAM-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1948.

No. 460

WILLIAM J. CLEARY,

Petitioner,

vs.

CHICAGO TITLE AND TRUST COMPANY,
A CORPORATION,

Respondent.

RESPONDENT'S REPLY TO PETITION FOR REHEARING.

A. No Substantial Federal Question Exists in This Case.

The statement in the above heading was the initial point presented in respondent's opposing brief (pp. 3-5). The sole ground on which petitioner sought to invoke the jurisdiction of this court was the refusal by the state appellate court to reassign the cause to another division of that court. The petitioner claimed that this action was in violation of the due process clause. The cases cited by respondent in its opposing brief, particularly *Trade Comm'n* v. *Cement Institute* (1948), 333 U. S. 683, 702, 703, clearly establish that this action of the Appellate Court was not a denial of due process.

This basic point so presented by respondent is ignored in the petition for rehearing. Nevertheless, on page 2 of the petition for rehearing it is said, "There is no doubt of the existence of a Federal Constitutional issue in this case * * *." This statement is reiterated, in substance, three times, as though by repetition a federal question might be made to appear where none exists. There is no federal question in this case and, therefore, no "dovetailing federal jurisdictional limitations with state procedural ones." (Petition for Rehearing, p. 3.)

B. Even Assuming, Arguendo, That a Federal Question Was Involved, Petitioner Failed to Exhaust the Method of Review Prescribed by State Procedure, Which Failure Precludes a Review by This Court.

At page 3 of the petition for rehearing, it is said, "* * * if, as respondent contended, a review by the Supreme Court of Illinois rests upon its discretion, the negative action of that court through refusal of hearing would defeat the possibility of review by this court." The Illinois statute gives a clear, simple and direct method of review of Illinois Appellate Court judgments by the Illinois Supreme Court in civil cases through petition for leave to appeal. Ill. Rev. Stat. 1947, Ch. 110, Sec. 199. Obviously, had petitioner filed a petition for leave to appeal in the Supreme Court of Illinois within the time allowed by state practice (which he failed to do) and had that petition been denied (and had a federal question been involved) the "possibility of review" by this court would have been open to petitioner.

Such are the holdings of this court. *Minneapolis, St. Paul & Sault Ste. Marie Railway Company* v. *Rock* (1929), 279 U. S. 410; *C. & O. Ry. Co.* v. *Mihas* (1929), 280 U. S. 102. In those cases the proceeding in the Illinois Supreme

Court was by petition for certiorari under the practice then applicable. The present practice in Illinois in like cases is by petition for leave to appeal. The two methods of review are different in name only.

In the case of *Gregory* v. *McVeigh* (1874), 23 Wall. 294, this court said at page 306:

> "It has long been settled that if a cause cannot be taken to the highest court of a State, except by leave of the court itself, a refusal of the court upon proper application made to grant the leave, is equivalent to a judgment of affirmance, and is such a final judgment as may be made the basis of proceedings under the appellate jurisdiction of this court."

And this court in *Parker* v. *Illinois* (1948), 333 U. S. 571, said at page 575:

> "The channel through which the constitutional questions, raised by petitioner in his attack on the amended order, could have been taken all the way to this Court was not only clearly marked, it was also open and unobstructed."

So in the case at bar, the path to be followed by petitioner to obtain a review by the highest court of the state by petition for leave to appeal, was plainly marked by state procedure, was open and unobstructed, and he did not follow it.

It is, therefore, respectfully submitted that the petition for rehearing be denied.

Respectfully submitted,

JOSEPH B. FLEMING,
HAROLD L. REEVE,
Attorneys for Respondent.

CHARLES F. GRIMES,
WILLIAM WILSON,
Of Counsel.